

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

SSS ENTERTAINMENT, LLC

V.

CARLOS BETHANCOURT AND
GIANCARLO MESSINA

CIVIL ACTION NO: -:19-CV-242

DEFENDANT GIANCARLO MESSINA’S NOTICE OF REMOVAL

Defendant Giancarlo Messina. (hereinafter “Messina”) files this Notice of Removal to remove this civil action from the 171th Judicial District Court of El Paso County, Texas, wherein it was filed as Cause No. 2019DCV2804 on July 29, 2019, to the United States District Court for the Western District of Texas El Paso Division in accordance with 28 U.S.C. §§ 1331, 1441, 1446.

I. Background

1. Plaintiff SSS Entertainment, LLC, (“Plaintiff”) filed this civil action in the 171th Judicial District Court of El Paso County, Texas on July 29, 2019. (Exhibit 1, Plaintiff’s Original Petition.) The action was styled *SSS Entertainment, LLC v. Carlos Bethancourt and Giancarlo Messina*. (Ex.1 at 1.)

2. In its Original Petition, Plaintiff alleges various claims against Defendant Messina, including breach of the fiduciary duty of loyalty, conspiracy to defraud, negligent misrepresentation and violations of Deceptive Trade Practices Act.

3.. Plaintiff seeks \$209,000.00 in actual damages as well as punitive and Treble Damages against Defendants.

II. Timeliness

4. Although he has not been served with citation in the state court proceeding, Defendant Messina first received a copy of Plaintiff’s Original Petition on July 31, 2019.

5. 28 U.S.C. § 1332(b)(1) states, “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.”

6. This Notice of Removal is timely because it was filed within thirty (30) days of the receipt by Defendant Messina, through service or otherwise, of the Plaintiff’s Original Petition. Specifically, this suit is being removed within 30 days of Defendant Messina’s receipt of a copy of Plaintiff’s Original Petition on July 31, 2019.

III. All Defendants Agree and Consent to Removal

7. Prior to filing this Notice of Removal, Defendant Messina conferred with Defendant Carlos Bethancourt about removing this case to federal court, and Bethancourt agreed and consented to the removal of this case.

IV. Venue

8. Pursuant to 28 U.S.C. § 1446(a), the United States District Court for the Western District of Texas El Paso Division, is the district and division embracing the place where the state court action is pending.

V. Notice

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being contemporaneously filed with the El Paso County District Clerk and a copy provided to counsel of record for both Plaintiff and to Defendant Bethancourt.

VI. Basis for Removal

A. Diversity Jurisdiction

10. 28 U.S.C. § 1332(a)(1) states, in part, “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—citizens of different States.”

11. Plaintiff, SSS Entertainment, LLC, which has its home office and principal place of business in El Paso County, Texas. Plaintiff SSS Entertainment, LLC is a citizen of Texas.

12. Defendant Carlos Bethancourt is, on information and belief, a citizen of Uruguay who resides in Mexico. Bethancourt is neither a citizen nor a resident of the state of Texas

13. Defendant Messina is a lawyer who lives and practices in the state of Florida. Defendant Messina. is a citizen of Florida.

14. Complete diversity “requires that all persons on one side of the controversy be citizens of different states than all persons on the other side.” See *McLaughlin v. Mississippi Power Co.*, 376 F.3d 344, 353 (5th Cir.2004); *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079 (5th Cir. 2008)

15. Here, Plaintiff and Defendant Bethancourt are citizens of different countries and Plaintiff and Defendant Messina are citizens of different states. Thus, there is complete diversity of citizenship between the parties. See *McLaughlin*, 376 F.3d at 353; *Harvey*, 542 F.3d at 1079.

16. If a party files in a civil claim in state court, the defendant(s) may remove the case to the federal district court in which it would have original jurisdiction based on diversity of citizenship. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68, 117 S. Ct. 467, 472, 136 L. Ed. 2d 437 (1996).

B. Amount in Controversy

17. 28 U.S.C. § 1332(a) states, in part, “[T]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

18. Plaintiff seeks monetary damages over \$ 250,000.00. (See Ex. 1 at 13 ¶¶ 28-33, 14 ¶¶ 34-9, and 15 ¶¶ 40-1.)

19. 28 U.S.C. §1446(2) states that the damages alleged in the initial pleading shall be deemed to be the amount in controversy.

20. Consequently, the monetary amount in controversy exceeds \$75,000.00.

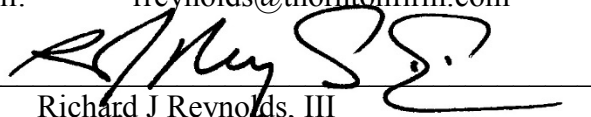
VII. Conclusion and Prayer

Defendant Giancarlo Messina respectfully requests this Court to issue all necessary orders and processes to effectuate the removal of this action from the 171st Judicial District Court of El Paso County, Texas to the United States District Court for the Western District of Texas – El Paso Division.

Respectfully Submitted,

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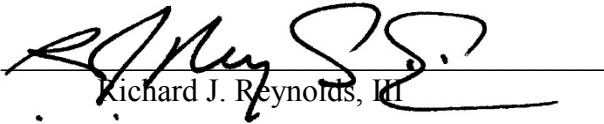


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Counsel for Defendant
Giancarlo Messina

CERTIFICATE OF SERVICE

The undersigned hereby certifies a true and correct copy of the foregoing document has been delivered to all counsel, via facsimile, pursuant to Fed. R. Civ. P. on this, the 29th day of August, 2019.

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